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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

NO. 450

POLICE COMMISSIONER OF BALTIMORE CITY
AND
STATE'S ATTORNEY FOR BALTIMORE CITY,
Petitioners,

VS.

SIEGEL ENTERPRISES, INC. T/A SIEGEL BOOK AND MAGAZINE STORE AND CHARLES BOOK CENTER,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

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JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on July 1, 1960, and is printed in Appendix B.

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3), since the validity of a State statute on the grounds of repugnancy to the Constitution of the United States is drawn in question.

The Court of Appeals of Maryland affirmed an Order of the Superior Court of Baltimore City (Reuben Oppenheimer, Judge) declaring Section 421 (a) (b) and (d) of Article 27 of the Annotated Code of Maryland (1957 Ed. and 1960 Supp.) unconstitutional and void and enjoining the petitioners from enforcing said section. The Court of Appeals of Maryland, in their opinion, stated that they were applying the rule in regard to the definiteness required in criminal statutes as laid down by the Supreme Court of the United States, thus basing the affirming opinion on the cases as decided by this Honorable Court.

QUESTIONS PRESENTED

1. Whether this Honorable Court should re-examine and reconsider the decision of this Court in *Winters v. New York*, 333 U.S. 507, 92 L. Ed. 840, 68 S. Ct. 665?

2. Are sub-sections (a), (b) and (d) of Section 421 of Article 27, Annotated Code of Maryland (1957 Ed. and 1960 Supp.) constitutional?

STATUTES INVOLVED

The provisions of Sections 421, 423 and 425 of Article 27 of the Annotated Code of Maryland (1957 Ed. and 1960 Supp.) are set forth in Appendix A of this petition. Articles 23 and 40 of the Declaration of Rights are also set forth in Appendix A.

STATEMENT

On May 28, 1959, a petition for declaratory judgment and claim for injunction was filed by the Respondents alleging that sub-sections (a) (b) and (d) of Section 421 of Article 27 of the Annotated Code of Maryland (often referred to as the Crime Comic Book Act) were unconstitutional and requesting the Court to so declare and enjoin the Petitioners from enforcing said Act.

After a hearing, Judge Oppenheimer filed an opinion on January 19, 1960 finding that the Act was unconstitutional and an Order to that effect was signed on January 27, 1960. An appeal was filed by the Petitioners on January 28, 1960, and on July 1, 1960, the Court of Appeals of Maryland affirmed the decree. The Petitioners are now requesting this Honorable Court to issue a Writ of Certiorari to the Court of Appeals of Maryland in order that this Honorable Court may decide the very important questions presented.

The Court, in finding that the statutes involved were unconstitutional, primarily based such unconstitutionality on the case of *Winters v. New York*, 333 U.S. 507, 92 L. Ed. 840, 68 S. Ct. 665.

REASONS FOR GRANTING THE WRIT

The Maryland Court of Appeals based their opinion primarily on the case of *Winters v. New York*, 333 U.S. 507, 92 L. Ed. 840, 68 S. Ct. 665. This petition is filed to respectfully request this Honorable Court to re-examine and reconsider that decision in light of the conditions as they exist today. Since the *Winters* decision was pronounced in 1948 the distribution of the amount of material which that New York law was passed to control has increased each year until now it is one of the most important prob-

lems the cities, states and the country are now faced with, especially in regard to m[illegible]ors.

The Maryland General Assembly found, before passing the law which is before this Honorable Court in this petition, that in recent years there had been a serious and tremendous increase in Maryland in the number and variety of comic books of the types and kinds prohibited by law before this Court. The General Assembly also found that children below the age of eighteen years, being of susceptible and impressionable character, were or could be incited to commit certain crimes, in good part through the influence of these vicious and corrupt publications and that great numbers of these books were deliberately calculated to horrify and excite unreasonable terror in the impressionable minds of children. The General Assembly also found that the persons publishing and distributing these books do so with full knowledge and intent that the books will be sold to children and a substantial portion of the market for such books is children.

The changes which have occurred since the *Winters* case point up the need for its re-examination and reconsideration by this Court. It is established beyond doubt that the states have the power to restrict, prohibit or regulate obscenity and that statutes passed for this purpose are not in conflict with nor in contravention of the First or Fourteenth Amendment to the Constitution of the United States. See 16 C.J.S. 923, Section 186, and cases cited. *Roth v. United States*, 354 U.S. 476, 1 L. Ed. 2d 1498, 77 S. Ct. 1304; *Kingsley Books, Inc. v. Brown*, 354 U.S. 436, 1 L. Ed. 2d 1469, 77 S. Ct. 1325. See also *Beauharnais v. Illinois*, 343 U.S. 250, 96 L. Ed. 919, 72 S. Ct. 725; *Winters v. New York*, 333 U.S. 507, 92 L. Ed. 840, 68 S. Ct. 665; *Chaplinsky v. New Hampshire*, 315 U.S. 568, 86 L. Ed. 1031, 62 S. Ct. 766;

Near v. Minnesota, 283 U.S. 697, 75 L. Ed. 1357, 51 S. Ct. 625.

Obscenity statutes are not an invasion of, but a legitimate exception to the rights of free speech and of the press as guaranteed by the First Amendment.

In *Roth v. United States*, supra, this Court held that obscenity is not within the area of constitutionality protected speech or press, that is, that obscene literature does not necessarily involve any violation of the guarantee of free speech and press, protected from Federal infringement by the First Amendment and from State infringement by the Fourteenth Amendment. The Court said that in the light of history the unconditional phrasing of the First Amendment was not intended to protect every utterance and that the rejection of obscenity as utterly without redeeming social importance is implicit in the history of the First Amendment. Mr. Justice Brennan, speaking for the Court in the *Roth* case, said at page 1507 of 1 L. Ed. 2d:

> "* * * This rejection for that reason is mirrored in the universal judgment that obscenity should be restrained, reflected in the international agreement of over 50 nations, in the obscenity laws of all of the 48 States, and in the 20 obscenity laws enacted by the Congress from 1842 to 1956. This is the same judgment expressed by this Court in Chaplinsky v. New Hampshire, 315 U.S. 568, 571, 572, 86 L. Ed. 1031, 1035, 62 S. Ct. 766:
>
> "There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene * * * It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly

outweighed by the social interest in order and morality * * *".

This Court then held that obscenity was not within the area of constitutionally protected speech or press. The *Roth* case was the first time that the Court had squarely decided whether obscenity was an utterance within the area of protected speech and press.

One of the statutes involved in the *Roth* case was a California statute providing that whoever wilfully and lewdly writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent publication, or writes, composes, or publishes any notices or advertisements of any such publication is guilty of a misdemeanor. The Court, in upholdng the statute, indicated that a deprivation of free speech would occur if, in applying the statute, the trial court judged the publication by the effect of isolated passages rather than following the proper standard that to the average person under contemporary community standards, the dominant theme of the material, when taken as a whole, appealed to prurient interest. The Court ruled further that the statute involved no violation of due process by failing to provide a reasonably ascertainable standard of guilt since the statutory language, applied according to proper standards for judging obscenity, gave adequate warning of the conduct which was prohibited and marked the boundaries so that judges and juries could fairly administer the law.

The other statute, in the *Roth* case, which the Supreme Court held to be constitutional was the Federal obscenity statute which makes punishable the mailing of material that is "obscene, lewd, lascivious, or filthy * * * or other publication of an indecent character."

The statutes in the instant case exemplify a voluntary exercise of the police power of the state which does not encroach on any rights of the Respondent under the Constitutions of the United States or Maryland. In enacting the Crime Comic Book Act, the Maryland General Assembly found and determined as set forth in Section 420 of the Act:

> "The General Assembly of Maryland finds and determines that in recent years there has been a serious and tremendous increase in Maryland in the number and variety of comic books of the types and kinds prohibited by this subheading, dealing in substantial part with crimes and that many of such crime comic books are designed and formed so as to resemble closely other books devoted in substance to matters of humor published primarily for sale to children, being often placed for sale side by side with the humorous publications. The General Assembly also finds and determines that children below the age of eighteen years, being of susceptible and impressionable character, are or may be incited to commit certain crimes, in good part through the influence of these vicious and corrupt publications, and that great numbers of these books are deliberately calculated to horrify and excite reasonable terror in the impressionable minds of children, and do or may produce such results. The General Assembly further finds that the persons publishing and distributing these books do so with the full knowledge and intent that the same may be sold to children under the age of eighteen and further finds that a major and substantial portion of the market for such crime books is composed of children under the age of eighteen years and that such books are intended for such market." (Section 420, Article 27, Annotated Code of Maryland (1957 Edition)).

The Respondent in this case alleged that sub-sections (a) and (b) of Section 421 of Article 27, Annotated Code of